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ABSTRACT

Closed-captioned television is a highly motivating instructional medium that encourages reading, assists comprehension, and helps students to acquire new vocabulary. While these skills are important for all students, they are particularly important for bilingual students. This guide begins with information about the equipment needed: a television set, videocassette recorder, and a TeleCaption decoder. The guide then presents a variety of lessons and activities for using closed-captioned television with language minority students. These activities can be adapted for students of different ages, grades, and language proficiency levels, and all can be carried out with ordinary classroom materials. These activities have been found to be useful for helping language minority students develop reading strategies. The appendix provides technical information about the equipment as well as a copy of the copyright laws. (JL)

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Curriculum Guide

The New "English" Teacher
A Guide to Using Captioned Television With Language Minority Students

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Curriculum Guide

The New "English" Teacher
A Guide to Using Captioned Television With Language Minority Students

June 1990

THE NATIONAL CAPTIONING INSTITUTE, INC.

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Captioning: The New English Teacher
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INTRODUCTION

Over 35 million of our nation's children come from homes that do not speak English. Many of these children are recent immigrants, finding themselves in new environments without the skills needed to communicate in their new language. Their educational future may, indeed, be "at risk." While these linguistic minority students may make efforts to belong and to participate in school activities, they are besieged with problems in attempting to communicate with others in mainstreamed society. School programs, faced with limited resources, have had difficulty addressing the cultural and instructional needs of this widely diverse population.

To enhance their skills, a new conceptual model of second language acquisition suggests that children can learn a great deal of language informally through "comprehensible input" (Krashen, 1985; Trueba, 1989). Stimulated by the sheer exposure of print in and out of school, this approach proposes that children acquire language and literacy incidentally without formal instruction, using the language they already know and cues from the environment. These findings have led to recommendations that successful language programs need to be highly motivating, nonevaluative, involving linguistic minority children in ways that they temporarily seem to "forget" that they are hearing or reading another language. Programs of this nature allow students to effectively learn their new language while reading for real purposes.

In recent years, a new kind of "comprehensible input" in the form of captioned television has become available to many teachers in ESL classrooms. Closed-captioning represents an exciting new dimension to television viewing. Similar to subtitles, captions translate spoken dialogue into printed words on screen.

While originally developed for deaf and hard of hearing individuals, recent research suggest that closed captioning has the potential of enriching the lives of hearing individuals as well. The multi- sensory characteristics of captioning (video, audio, and print) offer students the opportunity to enlarge their vocabulary by viewing words in meaningful and stimulating contexts. Reading the written word, while being simultaneously assisted by the visual and audio context, enables students to understand words they might otherwise be unable to read. Previous studies on the uses of captioned television suggest that this medium is a highly motivating educational tool for enhancing the reading and language skills for special populations including learning disabled readers (Koskinen, Wilson, Gambrell & Jensema, 1987).

Recent research now indicates that captioning is also a remarkably effective tool for language acquisition. Bilingual students appear to gain a great deal of new vocabulary, without any formal instruction, while viewing and reading high interest captioned television programs (Neuman & Koskinen, 1990). As such, it has proven to be a valuable device for teachers and learners in improving reading.

Today, over 400 hours of weekly television shows have closed captions. In this booklet, we offer many ideas to teachers in an effort to spark their interest in using the exciting technology of captioned television in their classrooms.

GETTING STARTED

Captioned television is easy to use. Teachers need access to a television receiver (TV), a videocassette recorder (VCR), and a TeleCaption decoder. The TeleCaption decoder can be installed between the television and the VCR. Videotaped programs with captioning can then be obtained from area libraries and media centers, or can be taped directly off the air. (Please consult copyright restrictions in Appendix before using off the air television programs.)

Before using the equipment with students, spend a few minutes getting familiar with it. First, check any directions that come with the TV and VCR, and become familiar with the controls and features. In addition to the standard play, fast forward, rewind, stop, and eject buttons, most VCRs have a counter. If you set the counter at "0" before you start a tape, you can then note the number at any point in the program or at the end. This is very helpful when you wish to find a particular segment or program on your tape. The "pause" button is also an important feature on your machine. It will allow you to stop the machine by freezing the frame to focus on a specific instructional feature for students.

After you are familiar with the TV and VCR, adjust the TV's fine tuning and VCR tracking so that the captions are clear. If the equipment is not adjusted properly, captions may be garbled or not visible at all. A quick adjustment will easily correct this situation. The TeleCaption decoder also comes with a remote control. This will allow you to operate the equipment while watching along with the class.

After setting up your equipment, check on a number of safety issues. Are cords positioned so that no one will trip over them? Is the TV placed so that it will not tip over? We have found that specially designed carts, slightly tilted toward the audience, offer the best viewing conditions for regular classrooms. These are easily obtained through office and school supply stores. Also, be sure to purchase a television safety belt to secure the TV to the cart.

For more details on getting started, refer to the booklet, "Have You Read Any Good TV Lately?" (Koskinen & Wilson, 1985) , available through the National Captioning Institute.

USING CAPTIONED TV LESSONS

Once familiar with the equipment, it is very important to preview the particular program or segment before using it in the classroom. You know your students best and what is appropriate for them. Work with sixth, seventh and eighth grade students suggests that relatively short segments, approximately 5 to 15 minutes in one session, often work best. You will note in the activities provided in this booklet that many different kinds of programming can be used. Commercials, for example, offer a wealth of critical reading instructional ideas within highly motivational content, news programs can easily be segmented for specific instruction on expository writing. Even situation comedies, with their formulaic plot structures, are excellent vehicles for language acquisition and students' developing knowledge of story structure.

Before starting the videotape, check to be sure that all students can see the TV and the captions. You may need to rearrange seating for viewing. For example, a semi-circle of chairs without desks may allow students to more comfortably view and read at the same time.

When first using captioned television, it is helpful to emphasize to students that they will be reading and watching TV. You will note a number of activities in this booklet that specifically encourage students to focus on the words. You may chose to do these activities first as a way of introducing them to captioned television. For some students, it may take a conscious effort to become accustomed to automatically reading the captions.

USING THE ACTIVITIES IN THIS GUIDE

Closed-captioned television is a highly motivating instructional medium which encourages reading, assists comprehension, and helps students to acquire new vocabulary. While these skills are important for all students, the acquisition of new vocabulary seen in this meaningful form, is particularly critical for bilingual students.

Teachers know that in order to assist vocabulary development it is important to discuss many concrete examples of words. Closed-captioned television has the unique advantage of providing such concrete experiences with visual examples and demonstrations of vocabulary. Because the printed words are supported by the visual and audio contexts, students can develop important conceptual meanings of words that are new to them.

Also, students like watching television. Most students— even those who are hard to motivate when you want them to read a book—will gladly "read" a television program. Lessons on the components of a story, comprehension and writing activities can then be based on a television story. Once these strategies have been learned, they can be easily transferred to textbook reading.

You will find a variety of lessons and activities in this guide. Many of them can be adapted for different ages and grades. They are all designed to be used with students of varying levels of language proficiency. All can be carried out with ordinary classroom materials.

We have found these activities extremely useful for helping language minority students develop reading strategies. They are offered, however, not as fixed "recipes" but as guides. Only you know what works best in your classroom. We invite you, then, to create, adapt, or vary these lessons to meet the special language needs of your students.

LET'S READ WHAT WE WATCH!

Focus: Introducing captioned television

Targeted Reading Strategy:

Children are accustomed to listening and viewing images on television, but reading words on television, for the most part, will be a new experience. While much of the advantage of captioned television for bilingual students lies in the simultaneous hearing, reading and seeing words, this activity focuses on how reading the captioned words may be helpful understanding program content.

Activity:

1. Tell students that they are going to watch television in a way they have never done before. They are going to read it! Reading the lines on a captioned program can help them to understand and better follow the story. They will also learn new English words, while enjoying their favorite TV programs.

2. To demonstrate how useful captioning is, first have them watch a bit of a captioned program. Point to where the captioned words may be seen. Then, turn the sound off and ask them to pay close attention to the words on the screen.

3. Ask students if they were able to follow the story while reading the words. Discuss the story meaning with the entire class. Describe the powerful impact that the words have on their comprehension of the program. Tell them that in their class and in the future, students will be able to ask their friends, "Have you read any good TV lately?"

THINKING ALOUD

Focus: Comprehension, oral expression

Targeted Reading Strategy:

Students need to develop the kinds of strategies that good readers use to make meaning from material. By "thinking aloud" the teacher can model these processes as a method to encourage students to develop self-monitoring strategies in comprehension.

Activity:

1. To begin this classroom activity, watch a captioned program with a highly predictable plot. Periodically stop the video, using the pause button after a particular scene. "Think aloud" about the meaning of the program to students. There are many possible strategies that might be helpful, including the following:

- Demonstrate how to use one's prior knowledge:

  For example, "Now I know the robber will get caught because its a mystery, and that always seems to happen at the end."

- Show how to monitor comprehension strategies:

  For example, "I'm not sure I really understood the part about carbohydrates and energy. Maybe I should wait to form an opinion about it, until I get more information."

- Describe how one may use context clues to guess at unfamiliar vocabulary:

  For example, "I really don't know what 'fatigue' means, but from the way it's used in the program, I would guess it means 'tired.'"

- Demonstrate that it is appropriate to predict and guess what may happen next, even if it turns out not to be correct.

For example: "From what I've seen so far, I think the man in the blue shirt is going to win the prize. There were several clues that make me think so...."

You might wish to use this modeling technique on a regular basis, modelling one or two reading strategies per lesson.

2. Following this demonstration, encourage students to try to monitor their comprehension. Using a different highly predictable program (they'll have more success with this type of show, especially in the beginning), stop the tape after several brief episodes. Ask students general questions such as:

- What do you think will happen next?
- Why do you think so? What is your proof?
- Do you have any questions?

Students will enjoy predicting future events in a free flowing way. Tell them that they are using very complex comprehension skills and succeeding in monitoring these processes as they watch.

PICTURE IT

Focus: Vocabulary development

Targeted Reading Strategy:

Acquisition of new vocabulary is assisted when students can visualize new words. Captioned television provides important opportunities for students to associate new words with visual images. "Picture It" is designed to reinforce the use of visual imagery.

Activity:

1. Before presenting a captioned program to students, preview the program and make a list of words that might be new or difficult for your students.

2. After viewing the program, review the targeted vocabulary list and describe them. See if the students were able to pick up the meaning of words through their context in the story. Encourage them to try to make pictures in their minds of these words and use them in a sentence.

3. Next ask students to draw pictures illustrating the new words. This will encourage students to use their mental imagery and to relate personally to the vocabulary. Try using a simple "Picture It Worksheet" like the one on the next page.

PICTURE IT WORKSHEET

an elephant

a crowd

a tool

a novel

a tractor

a saint

USING CONTEXT CLUES

Focus: Using context clues for vocabulary building

Targeted Reading Strategy:

Words in the English language often take on different meanings in different contexts. Bilingual students need to learn how examine the context in which a word is presented to derive its meaning. Modeling these procedures, as well as providing practice, will prepare students to better understanding their reading materials and at the same time, will help them enlarge their oral and written vocabulary.

Activity:

1. Have students view a favorite captioned television. Situation comedies might be particularly useful for this activity because of their heavy emphasis on word play.

2. Choose several vocabulary words that have might have multiple meanings. These words do not need to be difficult. For example, the word "white," in some contexts might refer to a "color," or "to someone being pale or sick,"or "Caucasian."

3. Before showing tape, give students a list of target words to watch for while viewing and reading the program. Discuss how many words have many meanings and that they must look for clues in the program context to determine the specific meaning of the word in this context.

4. Next, have the students watch and read. Let them make notes as they watch, and then define its meaning in their own words. You may wish to stop the tape for a few seconds after the targeted vocabulary is shown so that the students may focus on each targeted word.

5. Discuss these definitions. How did they get the meaning of the word? Why did it fit in the context? Could another word be used? Why or Why not?

With practice, students will be able to identify many words in context as they read for pleasure and information.

USING THE CLOZE PROCEDURE FOR VOCABULARY DEVELOPMENT

Focus: Attending to context; vocabulary development and comprehension

Targeted Reading Strategy:

Providing activities that require bilingual students to learn words from context is especially useful in the intermediate grades and above when less formal vocabulary instruction is given by content teachers. The cloze procedure provides an opportunity to focus on using the context to determine the missing word.

Procedure:

1. Preview a captioned program. Write down a portion of the script (approximately 100 words).

2. Leave the first line in the script intact. Then, starting with the second line, leave a blank line where the word should be. Continue this procedure throughout the portion of the script (see example).

3. Let students read and watch the captioned program.

4. Following the program, give students the paragraph. Ask them to fill in the blanks with words that make sense. Accept all synonyms. Tell them that this activity will make them more sensitive to the context in which a word is presented.

5. You can derive a comprehension score by dividing the number of plausible answers with the total number of blanks given.

Note: This activity may be difficult for some bilingual students. Pairing students together may encourage them to work on this very useful exercise.

USING THE CLOZE PROCEDURE

The New York City Marathon

(From 3-2-1 Contact)

The New York City Marathon is 26 miles long. Sixteen thousand runners participate. _____ work out for months, _____ getting their bodies ready_____ the marathon. Twenty-six miles _____ running takes a lot _____ energy and plenty of oxygen. At first, runners in _____marathon are just sort _____swept along. Their bodies work _____ automatically. Breathing is a _____ example of this. When _____one breathes about three _____ faster than normal. The _____take in and exhaust 24 _____ of air a minute. _____ all the runners in _____ marathon, that's half a _____ gallons of air a minute!

WHAT DO I LIKE BEST?

Focus: Building self-esteem and written expression

Targeted Reading Strategy:

Being asked to express one's personal opinions and reactions to reading material helps students to become more invested in their learning. It is especially important to bilingual students, because it conveys the notion that ideas, spoken in their newly acquired language, are important and worth sharing with others.

Activity:

1. This activity works particularly well with captioned programs new to the TV schedule.

2. Tell students that you are interested in whether this program will be popular with students their age or not. You might introduce the notion of the "Nielsen Ratings," in which a sample of individuals are responsible for determining a program's popularity.

3. Following the viewing, ask students to fill in the "Reaction Worksheet" on the next page. Note that the worksheet asks for both writing and a picture. This provides alternatives for younger students or those with limited writing skills to express their ideas in different ways.

4. After they have completed the worksheet, let them form groups to determine what they liked about the program, and what they didn't like about it.

5. As a follow-up activity, you may decide to take a poll to determine whether the program should stay on the air or not. This may give students opportunity to graphically display this information, providing yet another outlet for literacy learning.

WHAT DO I LIKE BEST?

Title of the Program: _____

Draw a picture that describes your favorite scene in the program

What did you like best about this program?

_____

_____

_____

_____

What did you not like about this program?

_____

_____

_____

_____

Is there anything you would liked to see changed on this program?

_____

_____

_____

_____

REACTION JOURNALS

Focus: Writing and oral expression

Targeted Reading Strategy:

Bilingual students often lack confidence in their ability to express their thoughts and ideas in English. Therefore, it is particularly important to provide many opportunities for students to practice writing informally without fear of criticism. Writing also gives students opportunities to try out new vocabulary and to explore new concepts. A reaction journal, followed by sharing time, can provide an interesting forum for literacy interactions.

Activity:

1. Provide each student with a blank booklet to be kept in the classroom. Ask them to design a cover that features their name depicted on a television screen. Tell students that while you may read parts of their journals from time to time, this is an opportunity for them to record their comments about particular programs they may watch.

2. After viewing a closed captioned television program, ask students to write something about the program in this journal. Keep the assignment rather general; try not to be overly directive or specific about what they are to write. Depending on the program and the purposes for viewing, you may select one of the following prompts:

- Write about what you liked best about this program.
- Write about one thing you learned or found interesting in this program.
- Write about your own opinion of the topic covered in this program.

Journals should not be corrected or graded.

4. Ask students if they would like to share their ideas; make reading aloud a voluntary activity. To encourage them, try dividing students into small groups. For those who are reluctant, you may want to read their journals privately and write an encouraging note in response. Knowing that you find their thoughts valuable may encourage students, over time, to more willingly share their ideas with others.

A NEW LOOK FOR A BOOK

Focus: Listening comprehension, oral and written expression

Targeted Reading Strategy:

Retelling a story can be helpful in reinforcing comprehension. For this activity, students recreate the story in a form that can be shared with younger children. This is fun writing project, as well as a meaningful experience that can enhance self-esteem.

Activity:

1. This activity works best with a popular family or situation comedy captioned program. Tell students that they will be creating a picture book based on their favorite program to share with younger students.

2. Encourage students to watch the program carefully, noting the characters, setting and plot of the story. You may use some of the story frames to guide their viewing and reading.

3. Form groups of three to four students. Remind students that these stories should be rather short and follow a simple sequence. It may be helpful to have a collection of picture books available for students to look at and use as models. Seeing a wide variety, including pop-up books, Big Books, and varying illustrating styles, can sometimes spark an idea and stimulate creativity.

Be sure to also provide a variety of papers, art and drawing materials so that their final books can vary in size and format, from small pocket books to the larger big books.

4. While some groups may need organizational help from you for this project, many will be able to work out a process for their group. Some questions that may arise:

- Will they write captions first or start with pictures?
- Will they each draw and caption their own pictures?
- Will there be separate illustrators and writers?

Working through this process can be a nice way for students to work cooperatively and discover how their individual talents might together work toward an excellent product.

5. Several revising and editing sessions will be necessary. Once these books have been completed, arrange for the big day — the visit to a younger classroom. Sharing with young children works particularly well when there are two or three years differences: e.g. fourth grade writing for first grade.

CELEBRATE CAPTIONING!

Focus: Artistic expression; cooperative learning

Targeted Reading Strategy:

Encouraging bilingual students to express what they have learned artistically can help reinforce their reading and viewing experiences. In this case, groups are engaged in the motivational activity of designing a bulletin board. This collaborative activity provides many opportunities for language development by requiring students to select their favorite program, and visually represent it for others to enjoy in their classroom.

Activity:

1. This activity is best conducted after students have had several opportunities to view captioned television programs. Tell students that they will be responsible for creating a "reading bulletin board of the week" for their classroom, as a way of celebrating captioned television.

2. Working collaboratively, let groups select one of the programs they have viewed in class. Their goal is to use their imagination to create a bulletin board that features the story, concepts, and any interesting words presented in the program. Emphasize that bulletin boards are traditionally designed to grab students' attention. Therefore, encourage them to be creative in using colors and pictures. You may provide examples from books of particularly interesting bulletin boards.

3. This activity should be ongoing until everyone in the class has had the chance to participate. Provide as many materials as possible, including art supplies, lettering, and magazines. Try to remain an "advisor," while allowing groups to focus on their collaborative project--celebrating captioning.

RECIPROCAL QUESTIONING

Focus: Cooperative learning, developing meaningful questions

Targeted Reading Strategy:

Cooperative learning provides an opportunity for bilingual students to use their knowledge and language in meaningful ways. Working together to generate questions is also good practice for focusing on comprehension monitoring activities.

Activity:

1. Have students watch and read a captioned story or informational video.

2. Form groups of 4 to 6 students. Have them select a scribe to record all information for the group. Tell them to develop at least five questions to determine whether their classmates have carefully attended to the program. Remind them that these questions should not focus on minor details, but on the major events of the story or information provided in the video. Such questions might focus on:

   - Information that was explicitly presented in the program.
   - information that might be interpreted from the events of the program.
   - Information that might be applied to a new situation or context.

3. Let the recorder write the questions for the group. After briefly examining these questions, have students trade with another group. The new group's assignment is to answer these questions, either orally or in written form. By encouraging such cooperative learning, students will have opportunities to develop better questioning strategies at the same time they comprehend program materials.

INTERVIEWING A FRIEND

Focus: Oral expression, developing questioning strategies

Targeted Reading Strategy:

Interviewing a friend provides a meaningful context for students to use their oral language skills. It also focuses on learning how to obtain information through questioning. Because students are interested in their friend's lives, they are particularly motivated to observe experts and then practice their questioning skills.

Activity:

1. Present the class with several captioned news programs that include interviews. Some of the morning television programs, such as The Today Show, Good Morning America, and CBS Morning News are particularly useful for this activity. Following an interview, discuss the techniques the interviewer used. For example:

   - What are some of the questions asked?
   - Which questions elicited the most interesting answers?
   - What is a follow-up question?

2. Divide students into pairs. One can be the interviewer and the other, the interviewee. Explain that one of the goals of the activity is to discover something new about their friend that they didn't know before.

3. As a class, brainstorm ideas for questions. Then let students take a few minutes to write down specific questions. You may want to suggest that they include questions on school, hobbies, and other interests like their family and pets.

4. Have students in pairs conduct their interview for approximately 10 to 15 minutes. Then give the interviewer some time to write down any new information learned in an informal manner; at the same time, the interviewee may express in writing how it felt to be interviewed. If time allows, let students share their experiences with the entire class.

CREATING A WEB

Focus: Activating prior knowledge

Targeted Reading Strategy:

Drawing on one's prior knowledge is an important strategy for all readers. Activities that encourage bilingual students to think about what they already know, and make personal associations with material, demonstrates that even though they lack familiarity with English, they are indeed knowledgeable and capable learners.

Activity:

Creating a web is a technique used by many teachers as a pre-reading or pre-writing activity. Working with your class, you can start a web with a word written in the center of the board or large sheet of paper. As students have associations with the central word, other words are added, surrounding the central word. The web grows as students build freely on thoughts and associations. This is an example of a web:

Ideas that are associated, or are in the same category, are joined together. In this example, lights, radio, and television are joined together because they are all things that run on electricity.

1. Let students watch a particular program genre, such as situation comedy, news, or drama. Place one of these words, reflecting the particular genre selected in the middle of the board.

2. Brainstorm with students specific words relating to the major topic. For example, words associated with comedy might include laughter, laugh track, and practical jokes. Favorite stars such as Bill Cosby, Bob Newhart, and Shelley Long might also be included. Encourage students to describe the nature of programs in the particular genre from as many aspects as possible.

3. Once the web concept has been demonstrated, let students watch a different program genre, and in pairs create their own web. One of the particularly useful aspects of this activity, is that there are many different words and ways to create webs. Different answers are therefore, highly acceptable.

4. When the webs are finished, point out to students that they already know a great deal about their subject. This will encourage them to learn even more.

CREATING MULTIPLE WEBS

Focus: Prior knowledge and collaborative learning

Targeted Reading Strategy:

Webs are an excellent classroom activity. However, sometimes it is difficult to get everyone to participate, especially those who are less confident. "Multiple Webs" will include even the most reluctant student and do so in a comfortable small group setting.

Activity:

1. Divide the class into small groups of three for four students.

2. Tell students the main topic of the program to be viewed. Give them a general word to serve as the center of the web.

3. Following the program, let each group work on their web until you give them a signal. Then they are to trade webs with another group. Let the process continue with each group building on the other's web, until you feel they have exhausted their ideas.

4. Have students return webs to their original group. Students will enjoy seeing where there ideas led and how ideas were connected. They will also interested in looking at the commonality among webs across the different groups. This activity will give students an excellent opportunity to see the interconnections between different words and ideas in a captioned program.

USING CLUES

Focus: Inferencing

Targeted Reading Strategy:

Students often find it difficult to draw inferences from their reading. Making predictions is an excellent way to introduce inferencing — and it is usually fun. This activity shows students how to pause during their reading and predict what will happen next.

Activity:

1. Before presenting a captioned program, tell students the title and ask them to predict what they think the program will be about. Record their predictions on the board.

2. Watch approximately a quarter of the program, then stop the videotape for discussion. Ask students, "Were any of our predictions correct?" "Did the title of the program fool us?" Compare what actually occurred in the program with the list of predictions.

3. Before continuing, ask students to think about what the next segment of the program may be about. Say, "Can you predict what will happen next?" "What clues might be most revealing?" You may want to have students write a few notes on their own, if they are hesitant to make predictions before their classmates.

4. Continue to watch segments in a similar manner. After watching the whole program, discuss the process of making good predictions. Ask, "What kinds of clues proved most useful when we were making predictions?" Students often seem to think of predicting as merely guessing, so it is important to bring them to the realization that a good prediction is based on a clue or reason, not a wild guess. Discuss what were the best indications of upcoming events. This activity will lead students to generate more refined predictions of upcoming events in stories.

DEAR TV FRIEND

Focus: Character analysis and written expression

Targeted Reading Strategy:

In this exercise, students write a letter to a character in a program they have viewed. Encouraging them to directly react to a character engages students in active learning, character analysis and writing for real purposes. Even better, if they decide to send these letters to the actors/ or actresses who play these characters, they might just receive a special reply.

Activity:

1. Many bilingual students will be unfamiliar with the English format for letter writing. Therefore, before beginning this activity, it is extremely important to review basic letter writing conventions.

2. After viewing a drama, biography, or documentary, with strong characterization, ask students to select a particular character that they would like to know more about.

3. Have students brainstorm some potential questions they might want to raise about the character. Depending on grade level, some of the following questions might be useful:

- What are the character's other interests?
- What do you admire about the character?
- What do you and your character have in common?
- What is going to happen to the character?

4. Encourage students to write a personal letter to the character of their choice. After revising and editing these letters, they may be sent to: (The Name of the Show), (The Studio--NBC, ABC, CBS, all in New York City, NY). They will be forwarded to the particular shows.

5. With luck, the stars in these programs might just chose to write back or send a specially autographed picture!

WHERE AND WHEN

Focus: Identifying the setting of a story

Targeted Reading Strategy:

Identifying the time and place in which a story takes place is critical to comprehension. This activity is designed to help students focus on setting, using both the visual imagery and words from a captioned television story.

Activity:

1. Tell students that the setting of a story gives them a great deal of information about a program. Here, the time and place of the story may be described. This lesson, therefore, will focus on paying close attention to the various elements in the setting of a story.

2. Distribute the frame on the following page. After reviewing the worksheet, tell students to watch for the key words and visual clues that the writers have given them to determine the setting in the story.

3. Have students watch a captioned story. Programs such as "Long Ago and Far Away," "Storybreak,""or "ABC Afterschool Specials," may be particularly appropriate for this activity because they present a strong sense of setting in their narratives.

4. Have students complete the worksheet. Then discuss the results with the entire class. Examine what aspects of the program were most salient in conveying the setting. In this way, students will begin to focus on the explicit and implicit techniques that TV writers use to communicate this information to their audience.

WHERE OR WHEN WORKSHEET

1. When does the story take place in the past, present, or future _____?

2. Does the story tell you the year, month, or season that the story takes place?

   - Yes
   - No

3. If yes, how does it do so?

_____

_____

4. Where does the story take place?

_____

_____

5. What time of day does the story take place?

_____

6. How do you know?

_____

_____

7. Draw a picture of the setting and label the important words:

CHARACTER DESCRIPTIONS

Focus: Writing a character description

Targeted Reading Strategy:

Small group activities provide an excellent opportunity for oral language development. In this activity, students work together in small groups to write descriptive paragraphs, providing the opportunity for both oral and written language development.

Activity:

1. Select a captioned television program that tells a story. Before viewing the tape, explain that you will be asking students to write a paragraph describing a character from the particular television story.

2. Working in small groups of 2 to 4, let students brainstorm and make lists of descriptive words that could be used to describe the character they have selected. The "Character Description Worksheet" on the next page may be a helpful guide.

3. Let students compare lists and work collaboratively to write their paragraphs. At this point, the focus of the activity should be on the content of the written work, and not on spelling or forming complete sentences.

4. These completed paragraphs can be shared in a fun way with other groups or with the whole class. Let students read their paragraph aloud and have others guess who they are writing about. If their descriptions are detailed, students will be able to easily figure out the characters in the program. However, if students need a good deal of time to guess what character is being described, the authors must revise their descriptions accordingly to add more information.

Note: This activity may be somewhat difficult for the beginning student. It may be best presented after they have had some experience with less difficult assignments, such as the "Story Frame."

CHARACTER DESCRIPTION WORKSHEET

1. What does the character look like?

2. What are some of the things that the character does?

3. What are some of the character's strengths or weaknesses?

4. Does the character change over the course of the program?

5. Do you like the character? Why or why not?

STORY FRAMES

Focus: Story structure

Targeted Reading Strategy:

Story frames provide students with a structure for organizing their thoughts and responses to a story. They are also an excellent tool for fostering an understanding of story elements, such as character, setting and plot. This activity will help student develop a generic understanding of narrative story structures.

Activity:

1. Have students watch and read a captioned television program. Situation or family comedies are particularly appropriate for this activity, because they tend to be predictable with a highly formulaic story structure.

2. Review the components of a story, including character, setting and plot. Depending on the age and ability of your students, you may want to simplify or add to this frame. You may also want to choose only one feature of a story, such as character or plot.

3. Using the general frame on the following page, encourage students to fill in the information as they watch. This will help guide their viewing.

4. As a follow-up activity, have students watch a different program. Fill out the frames once again. With discussion, they will begin to develop an understanding that, while the events and individual characters may change, the story structure remains similar across narratives.

STORY FRAME WORKSHEET

Title of Program: _____

Setting Frame:

This story takes place _____

_____.

I know this because I saw _____

_____.

I also know this because they said _____

_____.

Character Frame:

The main character in this program is _____ .

The program says that this character is_____

_____. Once in the show, he/she did

_____.

I think he/she is (good/bad) because _____

_____.

Plot Frame:

In this story, the problem starts when _____

_____.

Next, _____

_____.

Then, _____.

The problem is solved when _____

_____.

STORY MAP

Focus: Identifying the elements of a story

Targeted Reading Strategy:

A story map provides a structure to help students identify the various elements that make up a story. This map allows students to generate and express responses in their own words.

Activity:

1. Distribute blank story maps such as the one on the next page. Explain the terms in the three sections. They will probably be familiar with each of the elements from the other lessons in this guide. Tell them now that they will be putting all this information together as they read and watch a particular captioned story.

2. Choose a narrative captioned program of interest to students. Encourage them to take notes as they view.

3. Following the program, have them fill out the story map.

4. Discuss the map. Suggest that while individual details in a story may change, the basic structure of stories remains the same. By understanding this structure, it may be easier to understand unfamiliar stories in book form as well.

Note: Frames and maps offer teachers a temporary "scaffolding" device for students to succeed in discerning story elements. Once students have become familiar with this structures, however, they are no longer needed. In fact, if used to excess, they make restrict student's natural creativity in constructing their own stories.

Creative writing activities are a natural outgrowth of students' increasing interest in narratives. Let students chose their own topics and share their writing with others.

STORY MAP WORKSHEET

1. The setting:

Where did the story occur?:

_____

_____

When did it happen?:

_____

2. The characters:

Names of main characters: Words that describe them:

_____ _____

_____ _____

_____ _____

3. The plot:

Write down the main events in the story:

_____

_____

_____

_____

4. The Conclusion:

How the story ended:

_____

_____

_____

_____

IN THE NEWS

Focus: Note taking, identifying the facts in a story and understanding current events

Targeted Reading Strategy:

Television news reports, with their emphasis on words and pictures, can be extremely helpful to students developing their skills in reading, writing and understanding current events. This activity focuses on encouraging students to listen and read the basic elements of a news report.

Activity:

1. Watch a captioned news program. Since these programs often uses specialized vocabulary, you may want to pre-teach some of the key words the students will encounter in viewing and reading news programs.

2. Discuss news reporting with your class, explaining that the factual content of a news story answers a number of key questions, including: who, what, when, where, and how? You might take an example from a Weekly Reader article to illustrate the usefulness of these questions.

3. Review the "In the News" form on the following page and ask students to fill it out while watching the news program.

4. After they have viewed the program and completed the form, run the program again and ask the students to raise their hands when one of the questions is answered. Put the tape on pause when they respond, and discuss which question is answered.

5. Discuss how knowing the basic elements of a news story makes it easier to understand and to remember important details.

6. As a follow-up activity, encourage students to write their own newsletter, using the key questions to write up their "In the News" important from the classroom activities.

IN THE NEWS

1. WHO is the story about? Try to list the key names in the story:

_____

_____

_____

2. WHAT happened? List the important events and facts of the story:

_____

_____

_____

_____

3. WHEN did the events happen? Be specific about time and dates:

_____

_____

4. WHERE did the events take place?

_____

_____

5. HOW did the events happen? Were reasons or causes given for the events that occurred?

_____

_____

6. Give a brief summary of the news story:

_____

_____

_____

_____

MAKING MEDIA COMPARISONS

Focus: Reading comprehension, oral language, story grammar.

Targeted Reading Strategy:

Stories in books are often presented differently when they are conveyed on the television screen. Setting, characters, and the plot may change to accommodate the particular medium. Television, for example, may focus on the action in a story, whereas a book might linger on descriptions. To demonstrate these differences, this exercise provides students opportunities to compare and contrast how the different media bring stories to life.

Activity:

1. Select a story that is represented on television and in storybook form. Programs such as "ABC Afterschool Specials," and "CBS Storybreak," are particularly useful for this activity.

2. View the captioned story. Intermediate students may want to take notes on the characters, plot, setting in the story.

3. Read the same story in book form. Encourage students again to take notes about the story features.

4. After viewing and reading, assign small group discussions of about three to four students. Have them discuss each story treatment. Using a large piece of chart paper, assign one student as the scribe and encourage them as a group to list the similarities and differences between the two story forms.

5. Choose a representative from each group. Tell them to display their chart paper, and summarize their findings to the entire classroom. Have students compare and contrast differences among group findings. From this discussion, students may determine how different media with their varying styles convey stories to their audiences.

GLITTERING GENERALITIES

Focus: Identifying advertising language

Targeted Reading Strategy:

It is extremely important for readers to be able to differentiate fact from opinion and unsubstantiated claims. This may be particularly difficult for students coming from another culture who are not familiar with the snazzy advertising techniques typically found on TV. Focusing on advertising gimmicks may help students become aware of how commercials are designed to capture their audience's attention. In doing so, students may become more aware of bias in the language of advertising.

Activity:

1. Preview and tape several popular captioned television commercials. These commercials should demonstrate common advertising techniques, using words like, "greatest" "everybody's buying it," or "on sale."

2. Show the tapes to the class. Ask, "What techniques do the advertisers use to try and get you to buy this product?" "How do they try to get your attention?"

3. Using the form on the next page, show the commercials once again. Tell students to focus on the visual images presented as well as the captioned words, as they view. After each commercial, give them an opportunity to complete their notes.

4. Discuss your findings as a group. Write down some of the key words designed to "grab" the audience's attention. Students will become more wary of advertiser's gimmicks and glittering generalities when they watch television at home.

5. As a follow-up activity, encourage students to look through magazines to determine if similar words are using in that advertising format. A collage of advertising words and slogans is a fun activity that students at all levels of language proficiency will enjoy.

You may also invite your students to develop their own commercials. Working in small groups, ask them to create a product and write a commercial to sell it. Their commercials can then be presented to the class. You may poll the "audience" to see if they'd buy their product.

GLITTERING GENERALITIES

Directions: Watch carefully and be aware of the words and the pictures that advertisers use to influence you.

1. Name of the product being advertised _____

2. How long did the commercial last? _____

3. What is the background scene for the commercial (what does not come with the product)?

_____

_____

4. How are they trying to influence you?

_____ a. something looks like fun
_____ b. something looks good to eat
_____ c. popular people use it
_____ d. everybody has one
_____ e. it is something magical
_____ f. other

_____

5. What words did they use to get your attention?

_____

_____

_____

6. What other techniques did they use to get your attention?

_____ a. Did they present a problem first?
_____ b. Did the volume get louder?
_____ c. Other

_____

7. Would you buy the product?

_____

Information about where to purchase a TeleCaption decoder may be obtained from:

The National Captioning Institute
5203 Leesburg Pike
Falls Church, Virginia 22041
(703) 998-2400 (Voice or TDD)

or

1- (800) 533-WORD (Voice)
1-(800) 321-TDDS (TDD)

APPENDIX A

Connecting the TeleCaption Decoder to a TV and VCR

Connecting Directions for VCR, Decoder, and TV)

USING ANY KIND OF ANTENNA

There are three main uses of a VCR:

- Recording the show you are watching
- Recording one show while watching another
- Playing back pre-recorded programs

NOTE: Only by connecting antenna-to-VCR-to-Decoder-to-TV (in that order) can you perform all three functions.

The following recommended hook-up allows you to use the VCR all three ways.

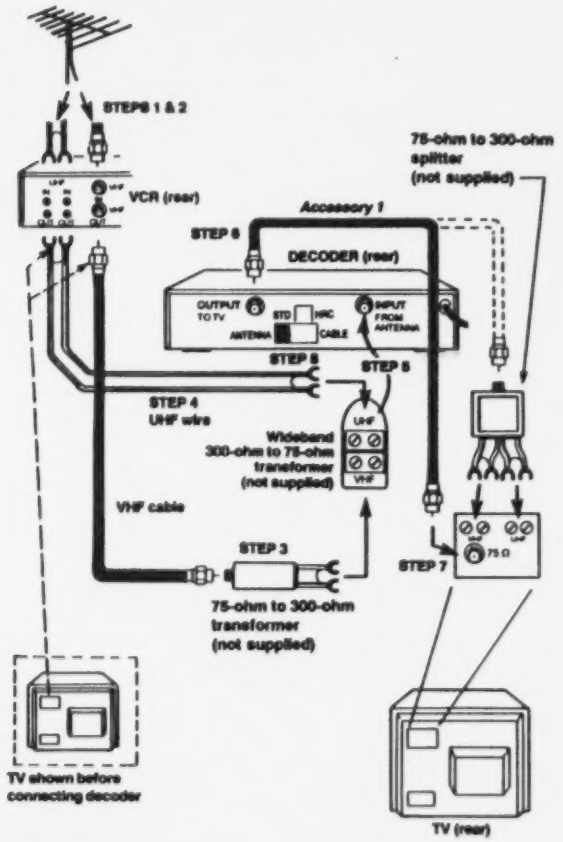
1. If your VCR is already connected to an outside antenna, proceed with Step 2 below. If your VCR is not connected to an outside antenna, refer to the instructions in your VCR manual for connecting the antenna.
2. Locate the UHF wire and VHF cable which go from your VCR to your TV. Disconnect the wire and cable (UHF/VHF) from the TV.
3. Connect the VHF cable from the VCR to a 75-ohm to 300-ohm transformer (not supplied). Then connect the transformer onto the VHF terminals on a wideband 300-ohm to 75-ohm transformer (not supplied).
4. Connect the UHF wire from the VCR directly to the UHF terminals on the wideband 300-ohm to 75-ohm transformer.
5. Push this transformer onto the decoder connector marked **"INPUT FROM ANTENNA."**
6. Screw one end of **"ACCESSORY 1"** onto the decoder connector marked **"OUTPUT TO TV."**
7. Screw the other end of **"ACCESSORY 1"** onto the TV antenna connector which was hooked up to the VCR or to a 75-ohm to 300-ohm splitter (not supplied).
8. Set the **"ANTENNA/CABLE"** switch on the rear of the decoder to **"ANTENNA."**

Your VCR has a switch marked **"VCR/TV."** When it is in the VCR position, you must use the VCR to select channels, and the decoder must be set to the same channel as the VCR "OUTPUT" (Ch4/Ch3). When the switch is in the TV position, use the decoder to select the channel you will watch on the TV, and use the VCR to select a different channel to record for later viewing. The switch must be set to VCR to play back tapes you have rented or recorded.

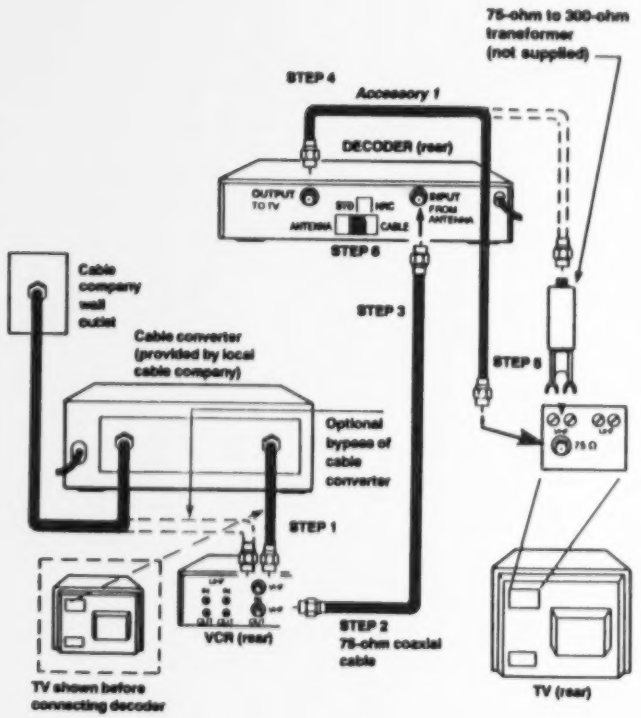
NOTES:

- Refer to page 5 for explanation of accessories.
- If your television is plugged into the decoder, the decoder must be turned on to receive television programs. Refer to "Important Operating Tips" on page 23 for further information.

Connection Method (for VCR, Decoder, and TV)



Connection Method (for Cable, VCR, Decoder, TV)



APPENDIX B

Copyright Laws

showing of an image on a cathode ray tube, or similar viewing apparatus connected with any sort of information storage and retrieval system.

Under clause (1) of the definition of "publicly" in section 101, a performance or display is "public" if it takes place "at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered." One of the principal purposes of the definition was to make clear that, contrary to the decision in *Metro-Goldwyn-Mayer Distributing Corp. v. Wyatt*, 21 C.O.Bull. 203 (D.Md.1932), performances in "semipublic" places such as clubs, lodges, factories, summer camps, and schools are "public performances" subject to copyright control. The term "a family" in this context would include an individual living alone, so that a gathering confined to the individual's social acquaintances would normally be regarded as private. Routine meetings of businesses and governmental personnel would be excluded because they do not represent the gathering of a "substantial number of persons."

Clause (2) of the definition of "publicly" in section 101 makes clear that the concepts of public performance and public display include not only performances and displays that occur initially in a public place, but also acts that transmit or otherwise communicate a performance or display of the work to the public by means of any device or process. The definition of "transmit"—to communicate a performance or display "by any device or process whereby images or sound are received beyond the place from which they are sent"—is broad enough to include all conceivable forms and combinations of wired or wireless communications media, including but by no means limited to radio and television broadcasting as we know them. Each and every method by which the images or sounds comprising a performance or display are picked up and conveyed is a "transmission," and if the transmission reaches the public in my [any] form, the case comes within the scope of clauses (4) or (5) of section 106.

Under the bill, as under the present law, a performance made available by transmission to the public at large is "public" even though the recipients are not gathered in a single place, and even if there is no proof that any of the potential recipients was operating his receiving apparatus at the time of the transmission. The same principles apply whenever the potential recipients of the transmission represent a limited segment of the public, such as the occupants of hotel rooms or the subscribers of a cable television service. Clause (2) of the definition of "publicly" is applicable "whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times."

Federal Rules of Civil Procedure

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

Cross References

Action for infringement of copyright, see section 501 of this title.

Common law rights, see section 301 of this title.

Copyright as distinct from property in object copyrighted, see section 202 of this title.

Copyright not capital asset, see section 1221 of Title 26, Internal Revenue Code.

Duration of copyright, see section 301 et seq. of this title.

Fines and penalties for willful infringement, see section 506 of this title.

Government publications as not copyrightable, see section 105 of this title.

Immoral and scandalous trade-marks, registrability, see section 1052 of Title 15, Commerce and Trade.

Jurisdiction of district courts of actions—

Arising under copyright laws, see section 1338 of Title 28, Judiciary and Judicial Procedure.

Founded on diversity of citizenship, see section 1332 of Title 28.

Preemption of other laws relating to exclusive rights within the general scope of copyright, see section 301 of this title.

Proclamation by President granting foreign authors copyright protection, see section 104 of this title.

Power of Congress to grant authors exclusive right to their writings, see Const. Art. 1, § 8, cl. 8.

Remedies for infringement of copyright, see sections 502, 503, 504, 505 of this title.

Renewal of copyright, see section 304 of this title.

Transfer of copyright, see sections 201 and 204 of this title.

Venue of action—

Arising under act of Congress relating to copyrights, see section 1400 of Title 28, Judiciary and Judicial Procedure.

Founded on diversity of citizenship jurisdiction, see section 1391 of Title 28.

Section Referred to in Other Sections

This section is referred to in sections 107 to 110, 112 to 118, 201, 301, 501, 602 of this title; title 2 section 170; title 18 section 2319.

§ 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2546.)

Historical and Revision Notes

House Report No. 94-1476

General Background of the Problem. The judicial doctrine of fair use, one of the most important and well-established limitations on the exclusive right of copyright owners, would be given express statutory recognition for the first time in section 107. The claim that a defendant's acts constituted a fair use rather than an infringement has been raised as a defense in innumerable copyright actions over the years, and there is ample case law recognizing the existence of the doctrine and applying it. The examples enumerated at page 24 of the Register's 1961 Report, while by no means exhaustive, give some idea of the sort of activities the courts might regard as fair use under the circumstances: "quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a dam-

BEST COPY AVAILABLE

aged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported."

Although the courts have considered and ruled upon the fair use doctrine over and over again, no real definition of the concept has ever emerged. Indeed, since the doctrine is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts. On the other hand, the courts have evolved a set of criteria which, though in no case definitive or determinative, provide some gauge for balancing the equities. These criteria have been stated in various ways, but essentially they can all be reduced to the four standards which have been adopted in section 107: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work."

These criteria are relevant in determining whether the basic doctrine of fair use, as stated in the first sentence of section 107, applies in a particular case: "Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."

The specific wording of section 107 as it now stands is the result of a process of accretion, resulting from the long controversy over the related problems of fair use and the reproduction (mostly by photocopying) of copyrighted material for educational and scholarly purposes. For example, the reference to fair use "by reproduction in copies or phonorecords or by any other means" is mainly intended to make clear that the doctrine has as much application to photocopying and taping as to older forms of use; it is not intended to give these kinds of reproduction any special status under the fair use provision or to sanction any reproduction beyond the normal and reasonable limits of fair use. Similarly, the newly-added reference to "multiple copies for classroom use" is a recognition that, under the proper circumstances of fairness, the doctrine can be applied to reproductions of multiple copies for the members of a class.

The Committee has amended the first of the criteria to be considered—"the purpose and character of the use"—to state explicitly that this factor includes a consideration of "whether such use is of a commercial nature or is for non-profit educational purposes." This amendment is not intended to be interpreted as any sort of not-for-profit limitation on educational uses of copyrighted works. It is an express recognition that, as under the present law, the commercial or non-profit character of an activity, while not conclusive with respect to fair use, can and should be weighed along with other factors in fair use decisions.

General Intention Behind the Provision. The statement of the fair use doctrine in section 107 offers some guidance to users in determining when the principles of the doctrine apply. However, the endless variety of situations and combinations of circumstances that can rise in particular cases precludes the formulation of exact rules in the statute. The bill endorses the purpose and general scope of the judicial doctrine of fair use, but there is no disposition to freeze the doctrine in the statute, especially during a period of rapid technological change. Beyond a very broad statutory explanation of what fair use is and some of the criteria applicable to it, the courts must be free to adapt the doctrine to particular situations on a case-by-case basis. Section 107 is intended to restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way.

Intention as to Classroom Reproduction. Although the works and uses to which the doctrine of fair use is applicable are as broad as the copyright law itself, most of the discussion of section 107 has centered around questions of classroom reproduction, particularly photocopying. The arguments on the question are summarized at pp. 30–31 of this Committee's 1967 report (H.R. Rep. No. 83, 90th Cong., 1st Sess.), and have not changed materially in the intervening years.

The Committee also adheres to its earlier conclusion, that "a specific exemption freeing certain reproductions of copyrighted works for educational and scholarly purposes from copyright control is not justified." At the same time the Committee recognizes, as it did in 1967, that there is a "need for greater certainty and protection for teachers." In an effort to meet this need the Committee has not only adopted further amendments to section 107, but has also amended section 504(c) to provide innocent teachers and other non-profit users of copyrighted material with broad insulation against unwarranted liability for infringement. The latter amendments are discussed below in connection with Chapter 5 of the bill [§ 501 et seq. of this title].

In 1967 the Committee also sought to approach this problem by including, in its report, a very thorough discussion of "the considerations lying behind the four criteria listed in the amended section 107, in the context of typical classroom situations arising today." This discussion appeared on pp. 32–35 of the 1967 report, and with some changes has been retained in the Senate report on S. 22 (S. Rep. No. 94–473, pp. 63–65). The Committee has reviewed this discussion, and considers that it still has value as an analysis of various aspects of the problem.

At the Judiciary Subcommittee hearings in June 1975, Chairman Kastenmeier and other members urged the parties to meet together independently in an effort to achieve a meeting of the minds as to permissible educational uses of copyrighted material. The response to these suggestions was positive, and a number of meetings of three groups, dealing respectively with classroom reproduction of printed material, music, and audio-visual material, were held beginning in September 1975.

In a joint letter to Chairman Kastenmeier, dated March 19, 1976, the representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, and of the Authors League of America, Inc., and the Association of American Publishers, Inc., stated:

> You may remember that in our letter of March 8, 1976 we told you that the negotiating teams representing authors and publishers and the Ad Hoc Group had reached tentative agreement on guidelines to insert in the Committee Report covering educational copying from books and periodicals under Section 107 of H.R. 2223 and S. 22 [this section], and that as part of that tentative agreement each side would accept the amendments to Sections 107 and 504 [this section and section 504 of this title] which were adopted by your Subcommittee on March 3, 1976.
>
> We are now happy to tell you that the agreement has been approved by the principals and we enclose a copy herewith. We had originally intended to translate the agreement into language suitable for inclusion in the legislative report dealing with Section 107 [this section], but we have since been advised by committee staff that this will not be necessary.
>
> As stated above, the agreement refers only to copying from books and periodicals, and it is not intended to apply to musical or audiovisual works.

The full text of the agreement is as follows:

BEST COPY AVAILABLE

AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR-PROFIT EDUCATIONAL INSTITUTIONS

WITH RESPECT TO BOOKS AND PERIODICALS

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223 [this section]. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill [this section]. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

GUIDELINES

I. *Single Copying for Teachers*

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

A. A chapter from a book;

B. An article from a periodical or newspaper;

C. A short story, short essay or short poem, whether or not from a collective work;

D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;

II. *Multiple Copies for Classroom Use*

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion: *provided that:*

A. The copying meets the tests of brevity and spontaneity as defined below; *and*

B. Meets the cumulative effect test as defined below; *and*

C. Each copy includes a notice of copyright.

Definitions

Brevity

(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(iv) "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher, and

(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. *Prohibitions as to I and II Above*

Notwithstanding any of the above, the following shall be prohibited:

(A) Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

(B) There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

(C) Copying shall not:

(a) substitute for the purchase of books, publishers' reprints or periodicals;

(b) be directed by higher authority;

(c) be repeated with respect to the same item by the same teacher from term to term.

(D) No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed March 19, 1976.

Ad Hoc Committee on Copyright Law Revision:

By SHELDON ELLIOTT STEINBACH.

Author-Publisher Group:

Authors League of America:

By IRWIN KARP, *Counsel.*

Association of American Publishers, Inc.:

By ALEXANDER C. HOFFMAN,
Chairman, Copyright Committee.

In a joint letter dated April 30, 1976, representatives of the Music Publishers' Association of the United States, Inc., the National Music Publishers' Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision, wrote to Chairman Kastenmeier as follows:

During the hearings on H.R. 2223 in June 1975, you and several of your subcommittee members suggested that concerned groups should work together in developing guidelines which would be helpful to clarify Section 107 of the bill [this section].

Representatives of music educators and music publishers delayed their meetings until guidelines had been developed relative to books and periodicals. Shortly after that work was completed and those guidelines were forwarded to your subcommittee, representatives of the undersigned music organizations met together with representatives of the Ad Hoc Committee on Copyright Law Revision to draft guidelines relative to music.

We are very pleased to inform you that the discussions thus have been fruitful on the guidelines which have been developed. Since private music teachers are an important factor in music education,

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due consideration has been given to the concerns of that group.

We trust that this will be helpful in the report on the bill to clarify Fair Use as it applies to music.

The text of the guidelines accompanying this letter is as follows:

GUIDELINES FOR EDUCATIONAL USES OF MUSIC

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223 [this section]. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future, and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill [this section]. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

A. *Permissible Uses*

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

2. (a) For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.

(b) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is, (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.

3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.

4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. *Prohibitions*

1. Copying to create or replace or substitute for anthologies, compilations or collective works.

2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.

3. Copying for the purpose of performance, except as in A(1) above.

4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.

5. Copying without inclusion of the copyright notice which appears on the printed copy.

The problem of off-the-air taping for nonprofit classroom use of copyrighted audiovisual works incorporated in radio and television broadcasts has proved to be difficult to resolve. The Committee believes that the fair use doctrine has some limited application in this area, but it appears that the development of detailed guidelines will require a more thorough exploration than has so far been possible of the needs and problems of a number of different interests affected, and of the various legal problems presented. Nothing in section 107 or elsewhere in the bill is intended to change or prejudge the law on the point. On the other hand, the Committee is sensitive to the importance of the problem, and urges the representatives of the various interests, if possible under the leadership of the Register of Copyrights, to continue their discussions actively and in a constructive spirit. If it would be helpful to a solution, the Committee is receptive to undertaking further consideration of the problem in a future Congress.

The Committee appreciates and commends the efforts and the cooperative and reasonable spirit of the parties who achieved the agreed guidelines on books and periodicals and on music. Representatives of the American Association of University Professors and of the Association of American Law Schools have written to the Committee strongly criticizing the guidelines, particularly with respect to multiple copying, as being too restrictive with respect to classroom situations at the university and graduate level. However, the Committee notes that the Ad Hoc group did include representatives of higher education, that the stated "purpose of the * * * guidelines is to state the minimum and not the maximum standards of educational fair use" and that the agreement acknowledges "there may be instances in which copying which does not fall within the guidelines * * * may nonetheless be permitted under the criteria of fair use."

The Committee believes the guidelines are a reasonable interpretation of the minimum standards of fair use. Teachers will know that copying within the guidelines is fair use. Thus, the guidelines serve the purpose of fulfilling the need for greater certainty and protection for teachers. The Committee expresses the hope that if there are areas where standards other than these guidelines may be appropriate, the parties will continue their efforts to provide additional specific guidelines in the same spirit of good will and give and take that has marked the discussion of this subject in recent months.

Reproduction and Uses for Other Purposes. The concentrated attention given the fair use provision in the context of classroom teaching activities should not obscure its application in other areas. It must be emphasized again that the same general standards of fair use are applicable to all kinds of uses of copyrighted material, although the relative weight to be given them will differ from case to case.

The fair use doctrine would be relevant to the use of excerpts from copyrighted works in educational broadcasting activities not exempted under section 110(2) or 112, and not covered by the licensing provisions of section 118. In these cases the factors to be weighed in applying the criteria of this section would include whether the performers, producers, directors, and others responsible for the broadcast were paid, the size and nature of the audience, the size and number of excerpts taken and, in the case of recordings made for broadcast, the number of copies reproduced and the extent of their reuse or exchange. The availability of the fair use doctrine to educational broadcasters would be narrowly circumscribed in the case of motion pictures and other audiovisual works, but under appropriate circumstances it could apply to the nonsequential showing of an individual still or slide, or to the performance of a short excerpt from a motion picture for criticism or comment.

Another special instance illustrating the application of the fair use doctrine pertains to the making of copies or phonorecords of works in the special forms needed for the use of blind persons. These special

forms, such as copies in Braille and phonorecords of oral readings (talking books), are not usually made by the publishers for commercial distribution. For the most part, such copies and phonorecords are made by the Library of Congress' Division for the Blind and Physically Handicapped with permission obtained from the copyright owners, and are circulated to blind persons through regional libraries covering the nation. In addition, such copies and phonorecords are made locally by individual volunteers for the use of blind persons in their communities, and the Library of Congress conducts a program for training such volunteers. While the making of multiple copies or phonorecords of a work for general circulation requires the permission of the copyright owner, a problem addressed in section 710 of the bill, the making of a single copy or phonorecord by an individual as a free service for blind persons would properly be considered a fair use under section 107.

A problem of particular urgency is that of preserving for posterity prints of motion pictures made before 1942. Aside from the deplorable fact that in a great many cases the only existing copy of a film has been deliberately destroyed, those that remain are in immediate danger of disintegration; they were printed on film stock with a nitrate base that will inevitably decompose in time. The efforts of the Library of Congress, the American Film Institute, and other organizations to rescue and preserve this irreplaceable contribution to our cultural life are to be applauded, and the making of duplicate copies for purposes of archival preservation certainly falls within the scope of "fair use."

When a copyrighted work contains unfair, inaccurate, or derogatory information concerning an individual or institution, the individual or institution may copy and reproduce such parts of the work as are necessary to permit understandable comment on the statements made in the work.

The Committee has considered the question of publication, in Congressional hearings and documents, of copyrighted material. Where the length of the work or excerpt published and the number of copies authorized are reasonable under the circumstances, and the work itself is directly relevant to a matter of legitimate legislative concern, the Committee believes that the publication would constitute fair use.

During the consideration of the revision bill in the 94th Congress it was proposed that independent newsletters, as distinguished from house organs and publicity or advertising publications, be given separate treatment. It is argued that newsletters are particularly vulnerable to mass photocopying, and that most newsletters have fairly modest circulations. Whether the copying of portions of a newsletter is an act of infringement or a fair use will necessarily turn on the facts of the individual case. However, as a general principle, it seems clear that the scope of the fair use doctrine should be considerably narrower in the case of newsletters than in that of either mass-circulation periodicals or scientific journals. The commercial nature of the user is a significant factor in such cases: Copying by a profit-making user of even a small portion of a newsletter may have a significant impact on the commercial market for the work.

The Committee has examined the use of excerpts from copyrighted works in the art work of calligraphers. The committee believes that a single copy reproduction of an excerpt from a copyrighted work by a calligrapher for a single client does not represent an infringement of copyright. Likewise, a single reproduction of excerpts from a copyrighted work by a student calligrapher or teacher in a learning situation would be a fair use of the copyrighted work.

The Register of Copyrights has recommended that the committee report describe the relationship between this section and the provisions of section 108 relating to reproduction by libraries and archives. The doctrine of fair use applies to library photocopying, and nothing contained in section 108 "in any way affects the right of fair use." No provision of section 108 is intended to take away any rights existing under the fair use doctrine. To the contrary, section 108 authorizes certain photocopying practices which may not qualify as a fair use.

The criteria of fair use are necessarily set forth in general terms. In the application of the criteria of fair use to specific photocopying practices of libraries, it is the intent of this legislation to provide an appropriate balancing of the rights of creators, and the needs of users.

Cross References

Action for infringement of copyright, see section 501 of this title.

Exclusive rights in copyrighted works, see section 106 of this title.

Remittance of statutory damages, see section 504 of this title.

Use of certain works in connection with noncommercial broadcasting, see section 118 of this title.

Use of material in conjunction with computers and similar information systems, see section 117 of this title.

Section Referred to in Other Sections

This section is referred to in sections 106, 108, 118, 501, 504 of this title; title 18 section 2319.

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, or to distribute such copy or phonorecord, under the conditions specified by this section, if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright.

(b) The rights of reproduction and distribution under this section apply to a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if the copy or phonorecord reproduced is currently in the collections of the library or archives.

(c) The right of reproduction under this section applies to a copy or phonorecord of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or

image to the public over television or other communication channels, would be an infringement for the same reasons that reproduction in copies would be. The concept of "the place where the copy is located" is generally intended to refer to a situation in which the viewers are present in the same physical surroundings as the copy, even though they cannot see the copy directly.

Effect of Mere Possession of Copy or Phonorecord. Subsection (c) of section 109 qualifies the privileges specified in subsections (a) and (b) by making clear that they do not apply to someone who merely possesses a copy or phonorecord without having acquired ownership of it. Acquisition of an object embodying a copyrighted work by rental, lease, loan, or bailment carries with it no privilege to dispose of the copy under section 109(a) or to display it publicly under section 109(b). To cite a familiar example, a person who has rented a print of a motion picture from the copyright owner would have no right to rent it to someone else without the owner's permission.

Burden of Proof in Infringement Actions. During the course of its deliberations on this section, the Committee's attention was directed to a recent court decision holding that the plaintiff in an infringement action had the burden of establishing that the allegedly infringing copies in the defendant's possession were not lawfully made or acquired under section 27 of the present law [section 27 of former title 17]. *American International Pictures, Inc. v. Foreman*, 400 F.Supp. 925 (S.D.Alabama 1975). The Committee believes that the court's decision, if followed, would place a virtually impossible burden on copyright owners. The decision is also inconsistent with the established legal principle that the burden of proof should not be placed upon a litigant to establish facts particularly within the knowledge of his adversary. The defendant in such actions clearly has the particular knowledge of how possession of the particular copy was acquired, and should have the burden of providing this evidence to the court. It is the intent of the Committee, therefore, that in an action to determine whether a defendant is entitled to the privilege established by section 109(a) and (b), the burden of proving whether a particular copy was lawfully made or acquired should rest on the defendant.

References in Text

The first section of the Clayton Act, referred to in subsec. (b)(2), is classified to section 12 of Title 15, Commerce and Trade.

Section 5 of the Federal Trade Commission Act, referred to in subsec. (b)(2), is classified to section 45 of Title 15.

Amendments

1988—Subsec. (d). Pub. L. 100-617 substituted "(a) and (c)" for "(a) and (b)" and "copyright" for "coyright".

1984—Subsecs. (b) to (d). Pub. L. 98-450 added subsec. (b) and redesignated existing subsecs. (b) and (c) as (c) and (d), respectively.

Effective and Termination Dates of 1984 Amendment

Section 4 of Pub. L. 98-450, as amended by Pub. L. 100-617, § 1, Nov. 5, 1988, 102 Stat. 3194, provided that:

"(a) The amendments made by this Act [amending sections 109 and 115 of this title and enacting provisions set out as a note under section 101 of this title] shall take effect on the date of the enactment of this Act [Oct. 4, 1984].

"(b) The provisions of section 109(b) of title 17, United States Code, as added by section 2 of this Act, shall not affect the right of an owner of a particular phonorecord of a sound recording, who acquired such ownership before the date of the enactment of this Act [Oct. 4, 1984], to dispose of the possession of that particular phonorecord on or after such date of enactment in any manner permitted by section 109 of title 17, United States Code, as in effect on the day before the date of the enactment of this Act.

"(c) The amendments made by this Act [amending sections 109 and 115 of this title and enacting provisions set out as a note under section 101 of this title] shall not apply to rentals, leasings, lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring after the date which is 13 years after the date of the enactment of this Act [Oct. 4, 1984]."

Cross References

Action for infringement of copyright, see section 501 of this title.

Exclusive rights in copyrighted works, see section 106 of this title.

Section Referred to in Other Sections

This section is referred to in sections 106, 501 of this title; title 18 section 2319.

§ 110. Limitations on exclusive rights: Exemption of certain performances and displays

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if—

(A) the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution; and

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and

(C) the transmission is made primarily for—

(i) reception in classrooms or similar places normally devoted to instruction, or

(ii) reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places normally devoted to instruction, or

(iii) reception by officers or employees of governmental bodies as a part of their official duties or employment;

(3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compen-

sation for the performance to any of its performers, promoters, or organizers, if—

(A) there is no direct or indirect admission charge; or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions:

(i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and

(ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and

(iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;

(5) communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—

(A) a direct charge is made to see or hear the transmission; or

(B) the transmission thus received is further transmitted to the public;

(6) performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization; the exemption provided by this clause shall extend to any liability for copyright infringement that would otherwise be imposed on such body or organization, under doctrines of vicarious liability or related infringement, for a performance by a concessionnaire, business establishment, or other person at such fair or exhibition, but shall not excuse any such person from liability for the performance;

(7) performance of a nondramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;

(8) performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of: (i) a governmental body; or (ii) a noncommercial educational broadcast station (as defined in section 397 of title 47); or (iii) a radio subcarrier authorization (as defined in 47 CFR 73.293-73.295 and 73.593-73.595); or (iv) a cable system (as defined in section 111(f)).

(9) performance on a single occasion of a dramatic literary work published at least ten years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio subcarrier authorization referred to in clause (8)(iii), *Provided*, That the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization.

(10) notwithstanding paragraph 4 above, the following is not an infringement of copyright: performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations, if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2549; Pub. L. 97-366, § 3, Oct. 25, 1982, 96 Stat. 1759.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Clauses (1) through (4) of section 110 deal with performances and exhibitions that are now generally exempt under the "for profit" limitation or other provisions of the copyright law, and that are specifically exempted from copyright liability under this legislation. Clauses (1) and (2) between them are intended to cover all of the various methods by which performances or displays in the course of systematic instruction take place.

Face-to-Face Teaching Activities. Clause (1) of section 110 is generally intended to set out the conditions under which performances or displays, in the course of instructional activities other than educational broadcasting, are to be exempted from copyright control. The clause covers all types of copyrighted works, and exempts their performance or display "by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution," where the activities take place "in a classroom or similar place devoted to instruction."

There appears to be no need for a statutory definition of "face-to-face" teaching activities to clarify the scope of the provision. "Face-to-face teaching activities" under clause (1) embrace instructional performances and displays that are not "transmitted." The

concept does not require that the teacher and students be able to see each other, although it does require their simultaneous presence in the same general place. Use of the phrase "in the course of face-to-face teaching activities" is intended to exclude broadcasting or other transmissions from an outside location into classrooms, whether radio or television and whether open or closed circuit. However, as long as the instructor and pupils are in the same building or general area, the exemption would extend to the use of devices for amplifying or reproducing sound and for projecting visual images. The "teaching activities" exempted by the clause encompass systematic instruction of a very wide variety of subjects, but they do not include performances or displays, whatever their cultural value or intellectual appeal, that are given for the recreation or entertainment of any part of their audience.

Works Affected.—Since there is no limitation on the types of works covered by the exemption, teachers or students would be free to perform or display anything in class as long as the other conditions of the clause are met. They could read aloud from copyrighted text material, act out a drama, play or sing a musical work, perform a motion picture or filmstrip, or display text or pictorial material to the class by means of a projector. However, nothing in this provision is intended to sanction the unauthorized reproduction of copies or phonorecords for the purpose of classroom performance or display, and the clause contains a special exception dealing with performances from unlawfully made copies of motion pictures and other audiovisual works, to be discussed below.

Instructors or Pupils.—To come within clause (1), the performance or display must be "by instructors or pupils," thus ruling out performances by actors, singers, or instrumentalists brought in from outside the school to put on a program. However, the term "instructors" would be broad enough to include guest lecturers if their instructional activities remain confined to classroom situations. In general, the term "pupils" refers to the enrolled members of a class.

Nonprofit Educational Institution.—Clause (1) makes clear that it applies only to the teaching activities "of a nonprofit educational institution," thus excluding from the exemption performances or displays in profit-making institutions such as dance studios and language schools.

Classroom or Similar Place.—The teaching activities exempted by the clause must take place "in a classroom or similar place devoted to instruction." For example, performances in an auditorium or stadium during a school assembly, graduation ceremony, class play, or sporting event, where the audience is not confined to the members of a particular class, would fall outside the scope of clause (1), although in some cases they might be exempted by clause (4) of section 110. The "similar place" referred to in clause (1) is a place which is "devoted to instruction" in the same way a classroom is; common examples would include a studio, a workshop, a gymnasium, a training field, a library, the stage of an auditorium, or the auditorium itself, if it is actually used as a classroom for systematic instructional activities.

Motion Pictures and Other Audiovisual Works.—The final provision of clause (1) deals with the special problem of performances from unlawfully-made copies of motion pictures and other audiovisual works. The exemption is lost where the copy being used for a classroom performance was "not lawfully made under this title" and the person responsible for the performance knew or had reason to suspect as much. This special exception to the exemption would not apply to performances from lawfully-made copies, even if the copies were acquired from someone who had stolen or converted them, or if the performances were in violation of an agreement. However, though the performance would be exempt under section 110(1) in such cases, the copyright owner might have a cause of action against the unauthorized distributor under section 106(3), or against the person responsible for the performance, for breach of contract.

Projection Devices.—As long as there is no transmission beyond the place where the copy is located, both section 109(b) and section 110(1) would permit the classroom display of a work by means of any sort of projection device or process.

Instructional Broadcasting. *Works Affected.*—The exemption for instructional broadcasting provided by section 110(2) would apply only to "performance of a nondramatic literary or musical work or display of a work." Thus, the copyright owner's permission would be required for the performance on educational television or radio of a dramatic work, of a dramatico-musical work such as an opera or musical comedy, or of a motion picture. Since, as already explained, audiovisual works such as filmstrips are equated with motion pictures, their sequential showing would be regarded as a performance rather than a display and would not be exempt under section 110(2). The clause is not intended to limit in any way the copyright owner's exclusive right to make dramatizations, adaptations, or other derivative works under section 106(2). Thus, for example, a performer could read a nondramatic literary work aloud under section 110(2), but the copyright owner's permission would be required for him to act it out in dramatic form.

Systematic Instructional Activities.—Under section 110(2) a transmission must meet three specified conditions in order to be exempted from copyright liability. The first of these, as provided by subclause (A), is that the performance or display must be "a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution." The concept of "systematic instructional activities" is intended as the general equivalent of "curriculums," but it could be broader in a case such as that of an institution using systematic teaching methods not related to specific course work. A transmission would be a regular part of these activities if it is in accordance with the pattern of teaching established by the governmental body or institution. The use of commercial facilities, such as those of a cable service, to transmit the performance or display, would not affect the exemption as long as the actual performance or display was for nonprofit purposes.

Content of Transmission.—Subclause (B) requires that the performance or display be directly related and of material assistance to the teaching content of the transmission.

Intended Recipients.—Subclause (C) requires that the transmission is made primarily for:

(i) Reception in classrooms or similar places normally devoted to instruction, or

(ii) Reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places normally devoted to instruction, or

(iii) Reception by officers or employees of governmental bodies as a part of their official duties or employment.

In all three cases, the instructional transmission need only be made "primarily" rather than "solely" to the specified recipients to be exempt. Thus, the transmission could still be exempt even though it is capable of reception by the public at large. Conversely, it would not be regarded as made "primarily" for one of the required groups of recipients if the principal purpose behind the transmission is reception by the public at large, even if it is cast in the form of instruction and is also received in classrooms. Factors to consider in determining the "primary" purpose of a program would include its subject matter, content, and the time of its transmission.

Paragraph (i) of subclause (C) generally covers what are known as "in-school" broadcasts, whether open- or closed-circuit. The reference to "classrooms or similar places" here is intended to have the same meaning as

that of the phrase as used in section 110(1). The exemption in paragraph (ii) is intended to exempt transmissions providing systematic instruction to individuals who cannot be reached in classrooms because of "their disabilities or other special circumstances." Accordingly, the exemption is confined to instructional broadcasting that is an adjunct to the actual classwork of nonprofit schools or is primarily for people who cannot be brought together in classrooms such as preschool children, displaced workers, illiterates, and shut-ins.

There has been some question as to whether or not the language in this section of the bill is intended to include instructional television college credit courses. These telecourses are aimed at undergraduate and graduate students in earnest pursuit of higher educational degrees who are unable to attend daytime classes because of daytime employment, distance from campus, or some other intervening reason. So long as these broadcasts are aimed at regularly enrolled students and conducted by recognized higher educational institutions, the committee believes that they are clearly within the language of section 110(2)(C)(ii). Like night school and correspondence courses before them, these telecourses are fast becoming a valuable adjunct of the normal college curriculum.

The third exemption in subclause (C) is intended to permit the use of copyrighted material, in accordance with the other conditions of section 110(2), in the course of instructional transmissions for Government personnel who are receiving training "as a part of their official duties or employment."

Religious Services. The exemption in clause (3) of section 110 covers performances of a nondramatic literary or musical work, and also performances "of dramatico-musical works of a religious nature"; in addition, it extends to displays of works of all kinds. The exemption applies where the performance or display is "in the course of services at a place of worship or other religious assembly." The scope of the clause does not cover the sequential showing of motion pictures and other audiovisual works.

The exemption, which to some extent has its counterpart in sections 1 and 104 of the present law [sections 1 and 104 of former title 17], applies to dramatico-musical works "of a religious nature." The purpose here is to exempt certain performances of sacred music that might be regarded as "dramatic" in nature, such as oratorios, cantatas, musical settings of the mass, choral services, and the like. The exemption is not intended to cover performances of secular operas, musical plays, motion pictures, and the like, even if they have an underlying religious or philosophical theme and take place "in the course of [religious] services."

To be exempted under section 110(3) a performance or display must be "in the course of services," thus excluding activities at a place of worship that are for social, educational, fund raising, or entertainment purposes. Some performances of these kinds could be covered by the exemption in section 110(4), discussed next. Since the performance or display must also occur "at a place of worship or other religious assembly," the exemption would not extend to religious broadcasts or other transmissions to the public at large, even where the transmissions were sent from the place of worship. On the other hand, as long as services are being conducted before a religious gathering, the exemption would apply if they were conducted in places such as auditoriums, outdoor theaters, and the like.

Certain Other Nonprofit Performances. In addition to the educational and religious exemptions provided by clauses (1) through (3) of section 110, clause (4) contains a general exception to the exclusive right of public performance that would cover some, though not all, of the same ground as the present "for profit" limitation.

Scope of Exemption.—The exemption in clause (4) applies to the same general activities and subject matter as those covered by the "for profit" limitation today: public performances of nondramatic literary and musical works. However, the exemption would be limited to public performances given directly in the presence of an audience whether by means of living performers, the playing of phonorecords, or the operation of a receiving apparatus, and would not include a "transmission to the public." Unlike the clauses (1) through (3) and (5) of section 110, but like clauses (6) through (8), clause (4) applies only to performing rights in certain works, and does not affect the exclusive right to display a work in public.

No Profit Motive.—In addition to the other conditions specified by the clause, the performance must be "without any purpose of direct or indirect commercial advantage." This provision expressly adopts the principle established by the court decisions construing the "for profit" limitation: that public performances given or sponsored in connection with any commercial or profit-making enterprises are subject to the exclusive rights of the copyright owner even though the public is not charged for seeing or hearing the performance.

No Payment for Performance.—An important condition for this exemption is that the performance be given "without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers." The basic purpose of this requirement is to prevent the free use of copyrighted material under the guise of charity where fees or percentages are paid to performers, promoters, producers, and the like. However, the exemption would not be lost if the performers, directors, or producers of the performance, instead of being paid directly "for the performance," are paid a salary for duties encompassing the performance. Examples are performances by a school orchestra conducted by a music teacher who receives an annual salary, or by a service band whose members and conductors perform as part of their assigned duties and who receive military pay. The committee believes that performances of this type should be exempt, assuming the other conditions in clause (4) are met, and has not adopted the suggestion that the word "salary" be added to the phrase referring to the "payment of any fee or other compensation."

Admission Charge.—Assuming that the performance involves no profit motive and no one responsible for it gets paid a fee, it must still meet one of two alternative conditions to be exempt. As specified in subclauses (A) and (B) of section 110(4), these conditions are: (1) that no direct or indirect admission charge is made, or (2) that the net proceeds are "used exclusively for educational, religious, or charitable purposes and not for private financial gain."

Under the second of these conditions, a performance meeting the other conditions of clause (4) would be exempt even if an admission fee is charged, provided any amounts left "after deducting the reasonable costs of producing the performance" are used solely for bona fide educational, religious, or charitable purposes. In cases arising under this second condition and as provided in subclause (B), where there is an admission charge, the copyright owner is given an opportunity to decide whether and under what conditions the copyrighted work should be performed; otherwise, owners could be compelled to make involuntary donations to the fund-raising activities of causes to which they are opposed. The subclause would thus permit copyright owners to prevent public performances of their works under section 110(4)(B) by serving notice of objection, with the reasons therefor, at least seven days in advance.

Mere Reception in Public. Unlike the first four clauses of section 110, clause (5) is not to any extent a counterpart of the "for profit" limitation of the present statute. It applies to performances and displays of all types of works, and its purpose is to exempt from copyright liability anyone who merely turns on, in a public place, an ordinary radio or television receiving

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apparatus of a kind commonly sold to members of the public for private use.

The basic rationale of this clause is that the secondary use of the transmission by turning on an ordinary receiver in public is so remote and minimal that no further liability should be imposed. In the vast majority of these cases no royalties are collected today, and the exemption should be made explicit in the statute. This clause has nothing to do with cable television systems and the exemptions would be denied in any case where the audience is charged directly to see or hear the transmission.

With respect to section 110(5), the conference substitute conforms to the language in the Senate bill. It is the intent of the conferees that a small commercial establishment of the type involved in *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151 (1975), [95 S.Ct. 2040, 45 L.Ed.2d 84], which merely augmented a home-type receiver and which was not of sufficient size to justify, as a practical matter, a subscription to a commercial background music service, would be exempt. However, where the public communication was by means of something other than a home-type receiving apparatus, or where the establishment actually makes a further transmission to the public, the exemption would not apply.

On June 17, 1975, the Supreme Court handed down a decision in *Twentieth Century Music Corp. v. Aiken*, 95 S.Ct. 2040 [422 U.S. 151, 45 L.Ed.2d 84], that raised fundamental questions about the proper interpretation of section 110(5). The defendant, owner and operator of a fast-service food shop in downtown Pittsburgh, had "a radio with outlets to four speakers in the ceiling," which he apparently turned on and left on throughout the business day. Lacking any performing license, he was sued for copyright infringement by two ASCAP members. He lost in the District Court, won a reversal in the Third Circuit Court of Appeals, and finally prevailed, by a margin of 7-2, in the Supreme Court.

The *Aiken* decision is based squarely on the two Supreme Court decisions dealing with cable television. In *Fortnightly Corp. v. United Artists*, 392 U.S. 390 [88 S.Ct. 2084, 20 L.Ed.2d 1176, rehearing denied 89 S.Ct. 65, 393 U.S. 902, 21 L.Ed.2d 190], and again in *Teleprompter Corp. v. CBS*, 415 U.S. 394 [94 S.Ct. 1129, 39 L.Ed.2d 415], the Supreme Court has held that a CATV operator was not "performing" within the meaning of the 1909 statute, when it picked up broadcast signals off the air and retransmitted them to subscribers by cable. The *Aiken* decision extends this interpretation of the scope of the 1909 statute's right of "public performance for profit" to a situation outside the CATV context and, without expressly overruling the decision in *Buck v. Jewell-LaSalle Realty Co.*, 283 U.S. 191 (1931) [51 S.Ct. 410, 75 L.Ed. 971], effectively deprives it of much meaning under the present law. For more than forty years the *Jewell-LaSalle* rule was thought to require a business establishment to obtain copyright licenses before it could legally pick up any broadcasts off the air and retransmit them to its guests and patrons. As reinterpreted by the *Aiken* decision, the rule of *Jewell-LaSalle* applies only if the broadcast being retransmitted was itself unlicensed.

The majority of the Supreme Court in the *Aiken* case based its decision on a narrow construction of the word "perform" in the 1909 statute. This basis for the decision is completely overturned by the present bill and its broad definition of "perform" in section 101. The Committee has adopted the language of section 110(5) with an amendment expressly denying the exemption in situations where "the performance or display is further transmitted beyond the place where the receiving apparatus is located"; in doing so, it accepts the tradional, pre-*Aiken*, interpretation of the *Jewell-LaSalle* decision, under which public communication by means other than a home receiving set, or further transmission of a broadcast to the public, is considered an infringing act.

Under the particular fact situation in the *Aiken* case, assuming a small commercial establishment and the use of a home receiver with four ordinary loudspeakers grouped within a relatively narrow circumference from the set, it is intended that the performances would be exempt under clause (5). However, the Committee considers this fact situation to represent the outer limit of the exemption, and believes that the line should be drawn at that point. Thus, the clause would exempt small commercial establishments whose proprietors merely bring onto their premises standard radio or television equipment and turn it on for their customers' enjoyment, but it would impose liability where the proprietor has a commercial "sound system" installed or converts a standard home receiving apparatus (by augmenting it with sophisticated or extensive amplification equipment) into the equivalent of a commercial sound system. Factors to consider in particular cases would include the size, physical arrangement, and noise level of the areas within the establishment where the transmissions are made audible or visible, and the extent to which the receiving apparatus is altered or augmented for the purpose of improving the aural or visual quality of the performance for individual members of the public using those areas.

Agricultural Fairs. The Committee also amended clause (6) of section 110 of S. 22 as adopted by the Senate. As amended, the provision would exempt "performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization." The exemption extends only to the governmental body or nonprofit organization sponsoring the fair; the amendment makes clear that, while such a body or organization cannot itself be held vicariously liable for infringements by concessionaires at the fair, the concessionaires themselves enjoy no exemption under the clause.

Retail Sale of Phonorecords. Clause (7) provides that the performance of a nondramatic musical work or of a sound recording by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, is not an infringement of copyright. This exemption applies only if the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring.

Transmission to Handicapped Audiences. The new clause (8) of subsection 110, which had been added to S. 22 by the Senate Judiciary Committee when it reported the bill on November 20, 1975, and had been adopted by the Senate on February 19, 1976, was substantially amended by the Committee. Under the amendment, the exemption would apply only to performances of "nondramatic literary works" by means of "a transmission specifically designed for and primarily directed to" one or the other of two defined classes of handicapped persons: (1) "blind or other handicapped persons who are unable to read normal printed material as a result of their handicap" or (2) "deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission." Moreover, the exemption would be applicable only if the performance is "without any purpose of direct or indirect commercial advantage," and if the transmission takes place through government facilities or through the facilities of a noncommercial educational broadcast station, a radio subcarrier authorization (SCA), or a cable system.

AMENDMENTS

1982—Par. (10). Pub. L. 97-366 added par. (10).

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